

**FILED NOVEMBER 17, 2014**

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES**

In the Matter of	)	Case No.: <b>14-PM-05503-DFM</b>
	)	
<b>JORDAN MORRIS WANK,</b>	)	<b>ORDER GRANTING MOTION TO</b>
	)	<b>REVOKE PROBATION AND FOR</b>
<b>Member No. 29383,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

On October 21, 2014, the State Bar Office of Probation, represented by Terrie Goldade, filed a motion pursuant to Business and Professions Code sections 6093<sup>1</sup> and rules 5.310 et seq. of the Rules of Procedure of the State Bar<sup>2</sup> to revoke the probation of Respondent **Jordan Morris Wank** (Respondent). On October 31, 2014, Respondent filed a written response to the motion, not requesting a hearing and indicating his intention not to practice law any longer due to his health, finances and other personal reasons.

For the reasons stated below, the court finds, by a preponderance of the evidence, that Respondent willfully failed to comply with the terms of his probation. (Section 6093, subd. (c).) As a result, the court grants the motion of the Office of Probation to revoke Respondent's probation and its request to involuntarily enroll him as an inactive member of the State Bar pursuant to section 6007, subdivision (d). The court recommends that Respondent's probation

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<sup>1</sup>Future references to section(s) are to this source.

<sup>2</sup>Future references to rule(s) are to this source.

be revoked; that the previously-ordered stay of suspension be lifted; and that he be actually suspended for two years and until he complies with Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(c)(1).<sup>3</sup>

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **Jurisdiction**

Respondent was admitted to the practice of law in California on January 14, 1959, and has been a member of the State Bar at all times since.

### **Probation Violations**

On April 24, 2013, the State Bar Court filed an order approving the stipulation of the parties in State Bar Court case no. 12-O-11341 and recommending discipline consisting of a two-year stayed suspension and two years' probation on conditions including 90 days' actual suspension.

On July 9, 2013, the California Supreme Court filed an order, S210239, accepting the State Bar Court's discipline recommendation and ordering Respondent to comply, *inter alia*, with the following conditions of probation:

(a) Submit a written report to the Office of Probation on January 10, April 10, July 10 and October 10 of each year, or part thereof, during which the probation is in effect, stating under penalty of perjury that he has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report); and

(b) Within one (1) year of the effective date of the discipline, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School and Client Trust Accounting School, and passage of the test given at the end of each session.

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<sup>3</sup> All further references to standard(s) or std. are to this source.

The Supreme Court order became effective thirty days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on Respondent.

On July 17, 2013, the Office of Probation wrote a letter to Respondent, reminding him of the terms and conditions of his suspension and of the probation imposed pursuant to the Supreme Court's order and enclosing, among other things, copies of the Supreme Court's order, the probation conditions portion of the stipulation, instruction sheets and forms to use in submitting quarterly reports, and a schedule of the dates in 2013 that the State Bar Ethics and Client Trust Accounting Schools would be conducted. The letter includes a warning that, "For all conditions, being **even one day late** means that you are **not** in compliance." [Emphasis in original.] In addition, the letter notes that when a reporting deadline falls on a weekend or a holiday, the report must be received before that weekend or holiday. Another, similar letter was sent to Respondent on August 11, 2014.

The Office of Probation alleges in its motion to revoke Respondent's probation that he willfully violated all of the conditions of probation summarized above. The court finds the following with respect to those claimed violations.

#### **Failure to Submit Quarterly Reports**

The State Bar contends that Respondent failed to submit on a timely basis the quarterly report due on July 10, 2014, which was not filed until July 17, 2014. It also alleges that the report due by October 10, 2014, was not filed.

Having received no evidence to the contrary, the court concludes that Respondent's failure to file the October 2014 report constituted a willful violation of Respondent probation conditions.

As to the report filed on July 17, 2014, the Office of Probation notes that Respondent signed it on July 1, 2014 and that it was postmarked on July 2, 2014. The envelope, however,

was misaddressed to the State Bar on Flower Street instead of at the correct address on Figueroa Street. Accordingly, the correspondence was returned to Respondent. He telephoned the Office of Probation on July 14, 2014 to inquire about why it was returned and learned of his addressing error. He re-sent the quarterly report in a correctly-addressed envelope postmarked the next day, July 15, 2014, and it was filed on July 17, 2014. Respondent did not disregard his probation condition. He made a simple error which does not rise to the level of a willful violation.

#### **Failure to Take the State Bar Ethics and CTA Schools**

The Office of Probation alleges that Respondent failed to take the State Bar Ethics and Client Trust Accounting Schools before the deadline imposed by the Supreme Court order, namely August 8, 2014. Having received no evidence to the contrary, the court finds that Respondent willfully violated those probation conditions.

#### **Aggravating Circumstances**

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.2(b).) The court finds the following with regard to aggravating factors.

#### **Prior Discipline**

In aggravation, Respondent has two prior records of discipline. (Std. 1.2(b)(i).) This is a significant aggravating factor.

In State Bar Court case No. 12-O-11341, Respondent was found culpable of misconduct involving one count of violating rule 4-100(A) of the Rules of Professional Conduct (commingling). Respondent received, among other things, a two-year stayed suspension and two years of probation on conditions including 90 days' actual suspension.

In State Bar Court case Nos. 03-O-00570 and 03-O-04920, a private reproof was imposed effective August 10, 2004, pursuant to the parties' stipulation to two violations of rule 4-100(A) of the Rules of Professional Conduct (commingling).<sup>4</sup>

### **Indifference**

Respondent's failure to comply with the probation conditions, after being reminded by the Office of Probation, demonstrates indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).)

### **Mitigating Circumstances**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence, but did not introduce any such evidence. (Std. 1.2(e).) Accordingly, the court does not find any mitigating factors.

## **DISCUSSION**

Section 6093 authorizes the revocation of probation for a violation of a probation condition. The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and Respondent's recognition of his misconduct and his efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

Respondent has indicated his desire to no longer practice law due to his health, finances and other personal reasons after practicing law in California for over 50 years. Accordingly, he did not offer evidence explaining the noncompliance with the foregoing probation conditions or request a hearing in this matter. The court concludes that his original probation should be revoked and the two-year suspension, previously stayed, should now be imposed. (*Potack v.*

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<sup>4</sup> A copy of this record was not submitted to the court by the Office of Probation. The court therefore takes judicial notice of the relevant State Bar court records regarding this prior discipline record, including the stipulation; admits such documents into evidence; and directs the clerk to include a copy of such documents in the record of this case.

*State Bar* (1991) 54 Cal.3d 132; *Barnum v. State Bar* (1990) 52 Cal.3d 104, 107; *In the Matter of Potack, supra.*)

## **RECOMMENDED DISCIPLINE**

### **Probation Revocation/Actual Suspension**

For all of the above reasons, the court recommends that the probation of Respondent **Jordan Morris Wank**, Member No. 29383, previously ordered in Supreme Court matter S210239 (State Bar Court case No. 12-O-11341), be revoked; that the previous stay of execution of the suspension be lifted; and that Respondent be suspended from the practice of law for two years<sup>5</sup> and until he provides satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law before his actual suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

### **California Rules of Court, Rule 9.20**

The court recommends that Respondent be ordered to comply with rule 9.20 of the California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.<sup>6</sup>

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<sup>5</sup> With credit given for the period of involuntary inactive enrollment which commenced three days after the service of this decision in accordance with Business and Professions Code section 6007, subdivision (d)(3).

<sup>6</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, *inter alia*, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

## **MPRE**

Because Respondent was ordered by the Supreme Court to take and pass the MPRE in its order of July 9, 2013, the court does not recommend that Respondent be further ordered in this matter to take and pass that examination.

## **Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

## **ORDER REGARDING INACTIVE ENROLLMENT**

It is hereby ORDERED that Respondent **Jordan Morris Wank**, Member No. 29383, be involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6007, subdivision (d). This enrollment shall be effective three days following service of this order. The requirements of section 6007, subdivision (d)(1) have been met: Respondent was subject to a stayed suspension, was found to have violated probation conditions, and it has been recommended that Respondent be actually suspended due to said violations.

It is also ordered that his inactive enrollment be terminated in the future as provided by Business and Professions Code section 6007, subdivision (d)(2).

Dated: November \_\_\_\_, 2014

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DONALD F. MILES  
Judge of the State Bar Court